

§ 1302.8

18 CFR Ch. XIII (4-1-08 Edition)

discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of Title VI or this part, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(e) *Enforcement authority.* TVA's Director of Equal Opportunity Compliance, or a successor as designated by TVA's Board of Directors, will be responsible for all decisions about initiating compliance reviews and complaint investigations. TVA's General Manager, or a successor as designated by TVA's Board of Directors, shall be responsible for all decisions about initiating compliance actions under § 1302.8(a) of this part.

(Information collection requirements appearing in § 1302.7 were approved by the Office of Management and Budget under control number 3316-0077)

[49 FR 20481, May 15, 1984, as amended at 49 FR 47383, Dec. 4, 1984; 51 FR 9649, Mar. 20, 1986; 68 FR 51355, Aug. 26, 2003]

§ 1302.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act),

(2) Institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and

(3) Any applicable proceeding under State or local law.

The Assistant Attorney General, Civil Rights Division, Department of Justice, will be notified of all findings of probable noncompliance at the same time the recipient or applicant is notified.

(b) *Noncompliance with § 1302.5.* If anyone requesting financial assistance declines to furnish the assurance required under § 1302.5 of this part, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section and for such purposes, the term "recipient" shall be deemed to include one which has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, or a failure by the recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the TVA Board pursuant to § 1302.9, and (4) the expiration of 30 days after the TVA Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular political entity, or part thereof, or recipient as to whom such a finding has been made and shall be limited in its effect to the

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particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20483, May 15, 1984; 49 FR 47384, Dec. 4, 1984]

§ 1302.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1302.7(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1302.7(b) and consent to the mak-

ing of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before the TVA Board, or a member thereof, or, at the discretion of the Board, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall